

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1228 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

UNITED INDIA INSURANCE CO.LTD.

Versus

PARVATIBEN -DECD.THRO'HEIRS INDIRA WD/O KANTILAL & 2 ORS.

Appearance:

MR PV NANAVATI for Petitioner
NOTICE SERVED BY DS for Respondent No. 1
MR RAJNI H MEHTA for Respondent No. 4

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 17/03/98

ORAL JUDGEMENT

RULE. Inspite of notice, none appears for respondents No.1/1 to 1/4, 2 and 3. No relief as such has been claimed against the respondents. As the payment has already been made, Mr R H Mehta, learned Advocate waives service of Rule for respondent No.4.

2. By the impugned order dated 7.8.1996, the Motor

Accidents Claims Tribunal (Aux.), Vadodara has issued Jangam Warrant against the petitioner-United Insurance Company to recover the amount of Rs.7,40,370/- under Order 21 Rule 30-40 of CPC. It appears that the Motor Accident Claims Petitions No.909/83, 910/83, 911/83, 912/83 and 505/84 came to be decided by the judgment dated 12.11.1992. In all the cases, the tribunal directed the opponents to pay jointly and severally the amount awarded. During the execution proceedings, it was brought to the notice that there can be no award against the United India Insurance Company as the driver of the ambassador car was not found to be negligent. The relevant portion of the order of the tribunal reads as under:

"So the driver of Ambassador car has taken care to avoid incident and it is clear that the driver of tractor was rash and negligent and hence I decide issue No.1 in the affirmative in all the cases."

It is not in dispute that the tractor No.GAA 7409 was insured with Oriental Fire and Insurance Company, Vadodara. The ambassador car being No.GTK 9757 was insured with the petitioner United Insurance Company. The objection raised during the execution proceedings was rejected by the impugned order on the ground that the tribunal held both the vehicles, drivers, owners and the Insurance Companies responsible for making compensation to the claimants jointly and severally.

3. I have heard the learned Advocates for the parties. In view of the findings extracted above, the driver of the ambassador car was found to be not responsible for the accident and in view of it, the petitioner-Insurance Company is not liable to pay the compensation. It is of course true that in the operative part of the order, the liability has been fastened on all the opponents. Reading of the entire award would clearly shows that the tribunal did not intend to direct payment of compensation by the petitioner-Insurance Company.

4. In view of the aforesaid, this Revision Application is allowed and the impugned order dated 6.8.96 passed by the Motor Accident Claims Tribunal (Aux.), Vadodara, so far it relates to issuing of Jangam Warrant against the United India Insurance Company for recovering the amount of Rs.7,40,370/- is concerned, is quashed and set aside. In pursuance of the order dated 14.8.1996, the petitioner has deposited an amount of Rs.7,40,370/- before the Executing Court. It is not in

dispute that the said amount has been disbursed amongst the claimants. In view of this, the Executing Court may pass appropriate order with respect to the amount deposited by the United India Insurance Co.Ltd. Rule made absolute.

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msp.